

Carlos Valdivia Nuno, #98757-179,
a/k/a Carlos Nuno Valdivia,

Plaintiff,

VS.

Warden Mary Mitchell, FCI Edgefield;
Assistant Warden Oscar Acosta, FCI
Edgefield,

Defendants.

Civil Action No.: 8:09-2765-RBH-BHH

ORDER

The plaintiff brought this action seeking relief pursuant to Title 42, United States Code, Section 1983. On March 19, 2010, the defendants filed a motion to dismiss or, in the alternative, motion for summary judgment. By order of this court filed March 23, 2010, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the plaintiff was advised of the summary dismissal procedure and the possible consequences if he failed to respond adequately. Despite this explanation, the plaintiff elected not to respond to the motion.

As the plaintiff has failed to respond to the motion to dismiss or, in the alternative, motion for summary judgment, it appears to the court that he wishes to abandon this action. Therefore,

IT IS ORDERED that the plaintiff shall have through May 21, 2010, in which to file his response to the motion to dismiss or, in the alternative, motion for summary judgment. The plaintiff is advised that if he fails to respond, this action will be subject to dismissal for failure to prosecute pursuant to F. R. Civ. P. 41(b), and for failure to comply with this Court's orders, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and the

factors outlined in *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir.1982).
See *Ballard v. Carlson*, 882 F.2d 93 (4th Cir. 1989). The dismissal will be considered an
adjudication on the merits, i.e., *with prejudice*.

IT IS SO ORDERED.

s/Bruce Howe Hendricks
United States Magistrate Judge

April 29, 2010
Greenville, South Carolina